



Interoffice  
Memorandum

To: Cynthia Mangels - Corporate Vault  
From: Teresa Wright *Teresa Wright*  
Subject: Separation Agreement and Release

Department: Executive Compensation

Date: July 23, 2001

---

Attached is a fully executed original Separation Agreement and Release for Michael Kopper for the corporate vault:

cc: Pam Butler  
Mary Joyce  
Kristi Sullivan  
Sheila Walton

Respect

Integrity

Communication

Excellence

Form 000-459-5 (7/97)

E 1375'

Confidential Treatment Requested By Wilmer, Cutler & Pickering

## SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release ("Agreement"), made and entered into July 23, 2001 is between **Enron Corp.** and its affiliates ("Company"), having its offices at 1400 Smith Street, Houston, Texas 77002, and **Michael J. Kopper** ("Employee"), an individual residing at 2138 Bolsover Street, Houston, Texas 77005. Company and Employee agree as follows:

1. Employment. Employee's termination of employment with the Company shall be effective on August 1, 2001 ("Termination Date").
2. Consideration. Company shall provide Employee Nine Hundred Five Thousand Dollars (\$905,000.00) as consideration for signing this Agreement, to be paid in a lump sum within 10 days of Employee's Termination Date.
3. Severance Pay. Employee waives and the Company shall not be required to pay any additional severance pay or severance benefits that otherwise might be payable under the Company's Severance Pay Plan, except as provided for in this Agreement, in connection with the termination of Employee's employment. The consideration and remuneration provided for under this Agreement are greater than and thus are in lieu of any severance pay or severance benefit that otherwise would be payable under the Company's Severance Pay Plan, which Employee forfeits.
4. Employee Benefits. Except as otherwise provided in Section 3, Employee shall be entitled to receive vested or accrued benefits due and payable to Employee under all employee benefit plans and compensation plans. Employee shall retain the cellular phone that was provided to him by the Company, however, Employee agrees to assume all financial obligations associated with its use. Additionally, Employee shall retain the home facsimile machine and all future expenses related thereto. For the purpose of all Company stock plans, Employee's termination of employment shall be considered an involuntary termination.
5. Confidential Information, Return of Company Property, and Cooperation.

5.1 This Agreement. The terms of this Agreement and content of the discussions pertaining to this Agreement shall be considered and treated as confidential and Employee shall not discuss or otherwise disclose, in any manner, the fact of this Agreement, the amount paid under this Agreement, and/or the substance or content of discussions involved in reaching this Agreement to any person other than Employee's attorney and tax/financial advisors and as required by appropriate taxing or other legal authorities, or unless disclosure is otherwise necessary to enforce the obligations herein.

5.2 Company Property. All written materials, records, data, and other documents prepared or possessed by Employee during Employee's employment by Company which relate to Company's business, products, or services, is Company property. All information, ideas, concepts, improvements, discoveries, and inventions that are conceived, made, developed, or acquired by Employee individually or in conjunction with others during Employee's employment (whether during business hours and whether on Company's premises or otherwise) which relate

to Company's business, products, or services, is Company's sole and exclusive property. All memoranda, notes, records, files, correspondence, drawings, manuals, models, specifications, computer programs, maps, and all other documents, data, or materials of any type embodying such information, ideas, concepts, improvements, discoveries, and inventions are Company's property. At the termination of Employee's employment with Company, Employee shall return all of Company's documents, data, or other Company property to Company. Employee shall not retain copies of any such Company property. The above confidentiality obligation does not apply to documents or Company property related to Employee's services to any private equity fund or its affiliates.

5.3. Cooperation. Employee agrees that Employee will devote reasonable time necessary to assist in Company's litigation matters, including, but not limited to, meeting with counsel, providing testimony at depositions or trial, and related activities except to the extent that Employee's participation in Company litigation matters creates a conflict of interest to Employee. Company agrees to pay reasonable out of pocket expenses related to Employee's participation in litigation matters.

5.4 Confidential Information; Non-Disclosure. "Confidential Information" means and includes Company's confidential and/or proprietary information and/or trade secrets that have been developed or used and/or will be developed and that cannot be obtained readily by third parties from outside sources. Confidential Information includes, by way of example and without limitation, the following: information regarding customers, employees, contractors, and the industry not generally known to the public; strategies, methods, books, records, and documents; technical information concerning products, equipment, services, and processes; procurement procedures and pricing techniques; the names of and other information concerning customers, investors, and business affiliates (such as contact name, service provided, pricing for that customer, type and amount of services used, credit and financial data, and/or other information relating to Company's relationship with that customer); pricing strategies and price curves; positions; plans and strategies for expansion or acquisitions; budgets; customer lists; research; weather data; financial and sales data; trading methodologies and terms; evaluations, opinions, and interpretations of information and data; marketing and merchandising techniques; prospective customers' names and marks; grids and maps; electronic databases; models; specifications; computer programs; internal business records; contracts benefiting or obligating Company; bids or proposals submitted to any third party; technologies and methods; training methods and training processes; organizational structure; personnel information, including organization charts and salaries of personnel; payment amounts or rates paid to consultants or other service providers; and other such confidential or proprietary information. Employee acknowledges that this Confidential Information constitutes a valuable, special, and unique asset of Company, and that protection of such Confidential Information against unauthorized disclosure and use is of critical importance to Company. Confidential Information also includes Confidential Information of third parties, such as actual and potential customers, suppliers, partners, joint venturers, investors, financing sources, and the like of Company.

Employee also has access to, or knowledge of, Confidential Information of third parties, such as actual and potential customers, suppliers, partners, joint venturers, investors, financing sources and the like, of the Company.

Employee agrees that Employee will not, at any time after Employee's employment with Company, make any unauthorized disclosure of any Confidential Information, or make any use thereof. Employee also agrees to preserve and protect the confidentiality of third party Confidential Information to the same extent, and on the same basis, as Company's Confidential Information. The confidentiality obligations above do not apply to Employee's services related to any private equity fund or its affiliates.

5.5 Non-Solicitation of Customers. For a period of six (6) months following the termination of employment, Employee will not, either directly or indirectly, call on, service, or solicit competing business from customers of Company whom that Employee, within the previous twelve (12) months, (i) had or made contact with, or (ii) had access to information and files about, and will not assist any other person or entity in such a solicitation. The above non-solicitation obligations do not apply with respect to Employee's services related to any private equity fund or its affiliates.

5.6 Non-Competition Obligations. Company has provided Employee with access to Confidential Information and specialized training, and in order to protect the Confidential Information described above, and as part of the consideration to be paid hereunder, and as an additional incentive for Company to enter into this Agreement, Company and Employee agree to the following non-competition provisions. Employee agrees that for six (6) months following Employee's Termination Date, Employee will not, directly or indirectly, for Employee or for others, in North America:

- a. engage in the business of buying, selling, trading, structuring, or executing transactions in commodities, assets, or products in which Company is doing business, has plans to engage in business, or has engaged in business in the preceding 12-month period, including, but not limited to, gas, electricity, coal, chilled water, clean fuel, liquids, emissions, petrochemicals, energy assets, transmission capacity, lumber, agriculture, paper, pulp, packaging, communications, metals, weather products, electronic commerce, including business-to-business electronic commerce, "click trading," bandwidth communications, interest rates, credit, currencies, securities, or other commodities (including, without limitation, other energy commodities), or any futures, derivatives, or equities related to any of the foregoing, whether at wholesale or retail, or the development of systems, information technology (including, but not limited to, platforms, hardware, software, or other systems or electronic technology), accounting, or risk management with respect to any of the foregoing;
- b. engage in other types of business performed by Company, including the acquiring or disposing of assets or equity investments or providing or raising capital, through loans, equity, joint ventures, partnerships, working interests, production payments, credit, or similar arrangements into products, commodities, futures, derivatives, or other items in which Company currently is

engaging in business, has plans to engage in business, or has engaged in business in the preceding 12-month period;

- c. engage in activities relating to Company's business not described in parts a and b of this Article 3.4, to the extent that Employee has knowledge or information about such activities; or
- d. render advice or services to, or otherwise assist, any other person, association or entity in the business of a, b, or c above.

Employee understands that the foregoing restrictions may limit Employee's ability to engage in certain businesses in the geographic region and during the period provided for above, but acknowledges that these restrictions are necessary to protect the Confidential Information Company has provided to Employee. The above non-competition obligations do not apply to Services provided or work performed in any way related to any private equity fund or its affiliates.

5.7 Statements About Company. Employee shall refrain after Employee's employment from publishing any oral or written statements about Company, that are disparaging, slanderous, libelous, or defamatory; or that disclose private or confidential information about their business affairs; or that constitute an intrusion into their seclusion or private lives; or that give rise to unreasonable publicity about their private lives; or that place them in a false light before the public; or that constitute a misappropriation of their name or likeness.

6. Release and Acknowledgement.

- a. Employee releases, acquits, and forever discharges Company from any and all actions, causes of action, claims, demands, damages, costs, expenses, attorney's fees, and compensation whatsoever, in contract or in tort, which have accrued in whole or in part, or ever may accrue, against Company that are based upon facts occurring prior to the date Employee signs this Agreement, including but not limited to, any claims under Title VII of the Civil Rights Act, the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the National Labor Relations Act, the Employee Retirement Income Security Act, the Texas Labor Code, and any matter and/or any action under federal, state, or local laws or the common law which might arise out of Employee's association with, employment with, and/or termination from Company (except for claims by Employee necessary to enforce Employee's vested or accrued benefits on the Termination Date under any Company benefit or compensation plans.)
- b. This release does not apply or include the consideration or benefits described above or other promises and representations contained in this Agreement. This release also does not apply to claims which may arise after the date this release is signed. Employee understands that Employee may challenge the knowing and voluntary nature of this release under the Older Worker Benefit Protection Act (OWBPA) and

the ADEA before a court, the Equal Employment Opportunity Commission (EEOC), or any state or local agency charged with the enforcement of any discrimination laws despite the release language stated above. Employee also understands that nothing in this release prevents Employee from filing a charge or complaint with or from participating in an investigation or proceeding conducted by the EEOC or any state or local agency charged with the enforcement of any discrimination laws. Employee understands, however, that if Employee pursues a claim against the Company under the OWBPA and/or the ADEA, the Company may seek to set off the amount paid to Employee for signing this release against any award Employee may obtain in such legal proceeding, and the Company may be entitled to recover costs and attorneys fees incurred by the Company as specifically authorized under applicable federal or state law.

- c. Employee acknowledges that Company is paying the consideration described above in compromise and settlement only. Further, it is agreed and understood that this Agreement is not an admission by Company of any liability or any violation of any law or regulation. Moreover, payment by Company shall not be construed as an admission to any claim whatsoever or in any proceeding that exists or may arise in the future.
- d. Employee acknowledges, agrees, and represents to Company that:
  - (i) Employee has carefully read and fully understands the effect of the provisions of this Agreement, which Employee is entering knowingly and voluntarily; and
  - (ii) Employee has had a reasonable time of not less than 21 days in which to consider the effect of the provisions of this Agreement;
  - (iii) Employee was advised and encouraged to consult an attorney prior to executing this Agreement with respect to the effect of the provisions of this paragraph and Employee's execution of this Agreement.

Employee may revoke this Agreement during the seven-day period following the date Employee signs this Agreement, whereupon this Agreement shall be rescinded in its entirety and become null and void.

7. Miscellaneous.

7.1 Definition of "Company". "Company" shall include Company, Enron Corp., all of their subsidiaries and affiliated companies, and their officers, directors, employees, representatives, and attorneys.

7.2 Definition of "Employee." "Employee" shall include Employee and Employee's legal and other representatives, claimants, heirs, and beneficiaries.

7.3 Notices. Notices and all other communications shall be in writing and mailed by United States certified mail, addressed as follows: (a) If to Company: Enron Corp., 1400 Smith Street, Houston, Texas 77002, Attention: Corporate Secretary, (b) If to Michael J. Kopper: to 2138 Bolsover, Houston, Texas 77005. Any such notice shall be effective when delivered.

7.4 Applicable Law. This contract is entered into under, and shall be governed for all purposes by, the laws of the State of Texas, excluding applicable conflict-of-law rule(s) or principle(s).

7.5 No Waiver. No failure by either party hereto at any time to give notice of any breach by the other party of, or to require compliance with, any condition or provision of this Agreement shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.6 Severability. It is a desire and intent of the parties that the terms contained in this Agreement shall be enforceable to the fullest extent permitted by law. If any such term or the application thereof to any person or circumstances shall, to any extent, be construed to be invalid or unenforceable in whole or in part, then such term shall be construed in a manner so as to permit its enforceability to the fullest extent permitted by law. In any case, the remaining provisions of this Agreement or the application thereof to any person or circumstances other than those to which they have been held invalid or unenforceable shall remain in full force and effect. It is further the desire and intent of the parties that in the event of any breach of any portion of this Agreement, the remainder of this Agreement shall remain in effect as written and enforceable to the fullest extent permitted by law.

7.7 Counterparts. This Agreement will be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement.

7.8 Withholding of Taxes. Company will withhold from the payment described in Section 2 of this Agreement all federal, state, city, or other taxes as may be required pursuant to any law, governmental regulation, or ruling.

7.9 Entire Agreement; Modification. This Agreement constitutes the entire agreement of the parties with regard to the termination of employment of Employee, supersedes any and all prior written agreements between the parties, and contains all of the covenants, promises, representations, and agreements between the parties with respect to the termination of employment of Employee with Company. Each party to this Agreement acknowledges that no representation, inducement, promise, or agreement, oral or written, has been made by either party, which is not embodied herein or referred to hereby and that no agreement, statement, or promise relating to the employment or termination of employment of Employee with Company, which is not contained in this Agreement, shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing and signed by both parties.

7.10 Repayment Upon Rehire. If Employee should be rehired by Company or by any entity which controls, is controlled by, or is under common control with Company, within twelve

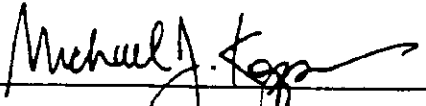
(12) months of the date of termination, Employee shall repay that portion of the payment under paragraph 2 that is in excess of the amount Employee would have earned during the time he was not employed by Company.

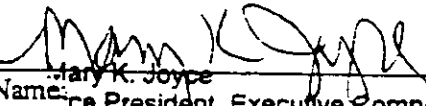
This Agreement will expire and become null and void if not executed and returned to the Company before the expiration of thirty (30) calendar days from Employee's receipt of this Agreement from the Company.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

MICHAEL J. KOPPER

ENRON CORP.

  
This 23 day of July, 2001

By:   
Name: Mary K. Joyne  
Title: ice President, Executive Compensation  
This 23 day of July, 2001